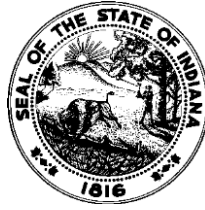


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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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## Frequently Asked Questions

### Personal Property Exemption

*REVISED March 24, 2016*

1. **Is the exemption for new purchases acquired by a certain date? Or does the exemption apply to all purchases regardless of the acquisition dates as long the total acquisition cost is less than \$20,000?**

The “under \$20,000” exemption applies to old and new personal property located in the county. For instance, if Acme Widgets has a total of three pieces of equipment in the county and the total acquisition cost of that equipment is \$15,000 as of the applicable assessment date, that property would be exempt from taxation regardless of when each piece was acquired. To be clear, all three pieces of equipment would have to have been acquired by the assessment date in question.

2. **So this exemption would not apply to every taxpayer in the county, only the taxpayers with a countywide personal property cost of less than \$20,000?**

Yes, that is correct.

3. **What does the taxpayer file to declare the exemption?**

Whereas the law previously required a taxpayer declaring this exemption to file a notarized certification with the county assessor, House Enrolled Act 1169-2016 provides that the taxpayer would declare the exemption by using a personal property form (specifically, Form 103-Short, Form 103-Long, or Form 102, as applicable). In other words, a taxpayer will no longer file a notarized certification to declare the exemption, but will instead use a personal property form.

**However, for purposes of the January 1, 2016 assessment date only, a taxpayer who has used or who will use a notarized certification to declare the exemption does NOT violate the law. In other words, taxpayers who have already filed a notarized certification do NOT need to file a personal property return to declare the exemption. Moreover, a taxpayer who files a notarized certification for 2016 despite this change in law does NOT need to file a personal property return to declare the exemption. Put differently, the notarized certification is grandfathered in for 2016 only. Either the notarized certification or the personal property form is acceptable for 2016.**

The Department has updated Forms 103-Short, 103-Long, 102, and 104 to include a check box and corresponding instructions. The Department emphasizes that an eligible taxpayer does NOT need to complete the entire personal property return. In addition, a taxpayer declaring the exemption on a Form 103 or Form 102 does NOT need to attach a Form 104 or any other form or schedule. The Department reiterates that it has provided instructions in the forms directing eligible taxpayers to complete only certain sections of the forms.

- 4. This exemption was effective July 1, 2015, which impacts personal property returns filed for the 2016 pay 2017 assessment cycle. However, the assessment date for personal property changed to January 1, 2016 for 2016 pay 2017 (although the forms are still due May 15, 2016). Would the personal property return on which the taxpayer has declared the exemption still be due by May 15, 2016?**

Yes. The change in assessment date does not affect the statutory obligation of the taxpayer to file the return by May 15 (technically May 16 for 2016 as May 15 falls on a Sunday). For purposes of the 2016 assessment date only, the notarized certification is likewise due by May 15 (technically May 16 for 2016 as May 15 falls on a Sunday).

- 5. Does the exemption apply per taxing district or is the aggregate total of “all locations” in the county what should be considered? In other words, if a taxpayer has a piece of equipment with an acquisition cost of \$10,000 in tax district A and a piece of equipment with an acquisition cost of \$15,000 in tax district B, is each tax district treated separately?**

You have to look at the total acquisition cost of all the taxpayer’s property in the county. In the example above, you would look at the aggregate amount of \$25,000, which exceeds the eligibility threshold. Therefore, the taxpayer would not be eligible to claim the exemption and would be required to calculate an assessment for each taxing district.

- 6. Does a taxpayer declaring the exemption need to complete a personal property return for each taxing district? An example would be a water softener company (water coolers located in all of our taxing districts in the county). They currently file a Form 103 for each taxing district, as they need to. Does the \$20,000 threshold apply to a county as a whole or to each individual taxing district? What if a company has the same taxpayer name and a different DBA/federal ID number?**

If the taxpayer is declaring the exemption on its personal property return, it would submit one personal property return and indicate that the total acquisition cost of its property in the entire county does not exceed \$20,000. The Department has advised that companies with different federal ID numbers are separate entities and stand alone. Even if an entity uses two different names, counties should rely on the federal ID number for determining whether there is one or more than one entity involved. So if Acme Widgets owns Company A with a federal ID of 001 and Company B with federal ID 002, Company A and Company B could potentially each qualify for the exemption depending on the total acquisition cost of their respective personal property in the county. For purposes of the 2016 assessment date only, the taxpayer could file one notarized certification for the entire county.

**7. What if a taxpayer completes the personal property return declaring the exemption but does not submit it timely? If they file the return late, is there a late fee?**

If a person fails to timely file the personal property return, the county auditor must impose a penalty of \$25 that must be paid by the person with the next property tax installment that is collected (See IC 6-1.1-37-7(f). This is a penalty different from the penalty historically imposed for an incomplete personal property return or a personal property return that is filed late. If the personal property return declaring the exemption is filed late, there would be only the ONE \$25 late penalty under IC 6-1.1-37-7(f) imposed. For purposes of the 2016 assessment date only, a notarized certification filed late is subject to this same \$25 penalty.).

**8. For purposes of the 2016 assessment date only, what if we get a notarized certification timely but it is not notarized? We probably would send a letter (or call them) and they would have to complete a new form and get their signature notarized. Do we complete a defect notice (giving them 30 days to correct) so we can give them a date in writing that the corrected notarized certification is due?**

The Department would encourage the assessor to reach out to the taxpayer and let them get the certification notarized. There is no statutory procedure for a defect notice or anything analogous, but arguably the \$25 penalty could be applied in this situation if the notarized certification is received after the deadline.

**9. Are farms included?**

Yes, businesses and farmers who meet the statutory requirements for this exemption are eligible to receive it.

**10. How do we enforce and penalize those who declare the exemption but are not really eligible? For example, will the Department recommend that we randomly audit them to ensure accuracy?**

As discussed above, there is a fine for an untimely certification. In the event a person commits perjury in signing the personal property return or, for purposes of the 2016 assessment date only, the notarized certification, the county's recourse is to confer with its prosecuting attorney. State law does not establish an audit program specific to this exemption. If an assessor believes that the taxpayer's property was not eligible for the exemption and the taxpayer was obligated to file a personal property tax return as usual but failed to do so, IC 6-1.1-3-15 offers the options of either examining the taxpayer's book and records in order to make a determination or, as an alternative, the assessor may estimate the value and place an assessment on the taxpayer by sending him a Form 113/PP. If a Form 113/PP is sent, the taxpayer may elect to file a personal property tax return, which would replace the estimated assessment, or he could accept or challenge this assessment through the appeals process.

**11. If the taxpayer doesn't file a personal property return declaring the exemption and we assume they're eligible for the exemption, does that mean we bump unfiled returns to \$20,000? How is this going to work?**

If the county receives nothing from a particular taxpayer and the county's records indicate that the taxpayer's previous returns reflected personal property with an acquisition cost of less than \$20,000, it stands to reason the taxpayer didn't file a return because it believed its property is exempt. The county may want to reach out to the taxpayer to confirm this. The taxpayer is still obligated to file the return declaring the exemption (or, for purposes of the 2016 assessment date only, the notarized certification) and an untimely return triggers the \$25 penalty under IC 6-1.1-37-7(f). If the county has reason to believe the taxpayer is not eligible for the exemption because its personal property has a total acquisition cost in excess of \$20,000, then the assessor has the remedies and procedures under IC 6-1.1-9 and 50 IAC 4.2 available to him or her.

**12. If a taxpayer fails to file a timely return, is there a notification process to let the taxpayer know that a penalty was applied? The Form 113/PP is used for changes to the assessment or a deduction claimed and doesn't seem to be the appropriate form to use, so perhaps the receipt of the tax bill would be the first notification?**

State law technically does not require the county to notify a taxpayer that he has incurred the penalty for a late filing. Although the county could choose to notify the taxpayer if it wanted to, the penalty will appear on the taxpayer's tax statement, which will serve as the taxpayer's notice.

**13. Is the application of the late filing penalty an appealable issue before the PTABOA and the IBTR?**

The Department does not believe that the penalty can be appealed via the existing Form 130 or Form 133 appeals processes. A taxpayer might be able to challenge the penalty in court, however.

**14. Can you explain what the service fee is in connection with this exemption?**

House Enrolled Act 1472 introduced IC 6-1.1-3-7.3, effective July 1, 2015, so that a county fiscal body may adopt an ordinance to impose a local service fee on each person that declares the exemption. The county fiscal body must specify the amount of the local service fee in the ordinance. The fee may not exceed \$50. The fee imposed for an assessment date is due and payable at the same time that property taxes for that assessment date are due and payable (meaning the next year). A county may collect a delinquent local service fee in the same manner as delinquent property taxes are collected. The revenue from a local service fee must be allocated in the same manner and proportion and at the same time as property taxes are allocated to each taxing unit in the county and may be used by a taxing unit for any lawful purpose of the taxing unit. **TO EMPHASIZE, THERE IS ONLY ONE SERVICE FEE PER PERSON CLAIMING THIS EXEMPTION WITHIN THE COUNTY WITHOUT REGARD TO THE NUMBER OF TAXING DISTRICTS THE EXEMPTION IS APPLICABLE TO.**

**15. What if a county adopts a \$50 service fee and a taxpayer's past tax history was only \$20 annually; could the taxpayer opt-out of claiming the exemption and file personal property tax returns as usual?**

No, the exemption is automatic for those who qualify for it. Thus, a county contemplating imposing the service fee may want to keep this type of situation in mind when doing so.

**16. So it is possible for a taxpayer to fail to file a timely return in a county that adopted a \$50 service fee and the taxpayer would receive a tax bill for \$75 (the \$50 fee and the \$25 penalty)?**

Yes, that is correct. If a taxpayer fails to file a timely return (or, for purposes of the 2016 assessment date only, a notarized certification) and the assessor assigns a value of \$20,000 or more and issues a Form 113/PP, the taxpayer could then submit a return declaring the exemption and end up being billed the \$25 late fee and \$50 service fee rather than being taxed.

**17. Could you explain the exemption for new business personal property and how it differs from the exemption for business personal property with a total acquisition cost of less than \$20,000?**

As a result of Senate Enrolled Act 1-2014, starting July 1, 2015, a county may adopt an ordinance to exempt from property taxation all new business personal property located in the county. "Business personal property" means personal property that is otherwise subject to assessment and taxation under IC 6-1.1; and that is used in a trade or business or otherwise held, used, or consumed in connection with the production of income. "New personal property" means business personal property that a taxpayer places in service after the later of the date the exemption ordinance is adopted or a date specified in the exemption ordinance; and that has not previously been used in Indiana before the taxpayer acquires the business personal property. A taxpayer is not required to file an application or a personal property tax return to qualify for this exemption. More information about this exemption is available here: <http://in.gov/dlgf/7576.htm>. Whereas this exemption is a county option, the exemption for business personal property with a total acquisition cost of less than \$20,000 is not. In addition, the exemption for business personal property with a total acquisition cost of less than \$20,000 applies to personal property regardless of whether it is "old" or "new," and requires the taxpayer to file a personal property return declaring the exemption. The optional exemption for new business personal property does not require the taxpayer to file any documentation.

**18. What if a taxpayer does not learn of this new exemption and files timely and *fully-completed* personal property tax returns with a countywide total acquisition cost of less than \$20,000 (and the taxpayer technically didn't check the box declaring the exemption)? Would the 113/PP give them 30 days to correct this? Would the \$25 late penalty be applied?**

The assessor should reduce those assessments to zero (\$ -0-). A Form 113/PP should be sent to notify the taxpayer of this change in assessment. Since the taxpayer went beyond what was technically required of him by completing the entire return and the assessor can address the error through the 113/PP, the assessor should have a sufficient paper trail. No penalty should be applied.

**19. In 2017, if an assessor discovers that she should have placed a penalty on a taxpayer for 2016, can she go back and do it?**

The statutes do not address this particular issue, but the Department believes the assessor could potentially go back to prior years.

**20. Is the notarized certification available for public inspection? What about a personal property return used to declare the exemption?**

The certification would likely be considered a public record, but it is theoretically possible that a taxpayer could include information on it that would need to be redacted before the document could be released. A personal property return is generally considered confidential, but not every part of a personal property return can be treated as confidential. Assessors are encouraged to confer with their attorneys and the Indiana Public Access Counselor in responding to public records requests.

**21. What about accounts that already are exempt per Form 136? Are these done any differently and if they are under \$20,000 cost, will they still have to do the certification? What happens if a church has less than \$20,000 cost so the exemption applies and the county adopts a \$50 service fee?**

Property exempt under IC 6-1.1-10 (e.g., church or charity property) or any other provision does not qualify for the “under \$20,000 cost” exemption. If an entity has been granted an exemption through a Form 136 application, then that exemption controls. The taxpayer would fully complete a personal property return as the taxpayer has always done and claim the exemption on that return. Such a taxpayer would not be subject to the service fee.

**22. How do counties handle fraud, such as where three brothers have a partnership but each report a portion of the partnerships assets in order to qualify for the exemption?**

The county could send them a Form 113/PP and let them challenge it if desired. The personal property return is signed under penalties for perjury, too.

**23. How is the exemption applied to leased property that is eligible for the exemption?**

In the case of leased property, the Department believes that whichever party (the owner or lessee) that would ordinarily be responsible for the taxes on the property can and should file the personal property return declaring the exemption. Since the property is exempt, there is really no need for the 103-N or 103-O forms, which are about establishing who is responsible for the taxes, since no taxes will be imposed on the property. If the county has adopted a service fee, the fee would be charged to the filer.

However, if an assessor believes that having taxpayers file a 103-N or 103-O is necessary or helpful in a particular situation, assessors would not be prohibited from requesting these filings.

**24. On new accounts that do not file, how will we know how to assess them? We normally put (less than \$20,000 cost) on the new non-file accounts unless we know for sure for that type of business it should be higher. If we know for sure that they are a small business, do we just give them the exemption automatically and go by what we estimated on the cost?**

Yes, and impose the \$25 late filing penalty.

**25. Regarding new businesses, since we do not know for sure what equipment/signs they have, do we send out a Form 113/PP to the new businesses?**

A Form 113/PP is used on any change to a personal property assessment regardless of whether it is a new or existing business. The assessor needs to decide whether this taxpayer probably qualifies for the exemption or should be assessed and then follow the appropriate course of action.

## **26. How will the exemption work on State Distributable property?**

For a public utility subject to IC 6-1.1-8 with less than \$20,000 cost to report within a county, the public utility seeking to declare this exemption must check the box on page one of the UD-32 or UD-45, as applicable, and enter the total acquisition cost of the taxpayer's personal (state distributable) property in the named county or counties, and complete only Sections I, III, and IV of the UD-32 or only Sections I and III of the UD-45.

If a taxpayer owns distributable property in multiple counties but not all of the property is eligible for the exemption, the taxpayer is responsible for backing out any exempt property from the overall sum he reports to the Department. If the taxpayer owns distributable property in just one county (and in only one taxing district in that county) in Indiana and the total acquisition cost of that property is less than \$20,000 and the taxpayer otherwise would have filed locally rather than with the Department, the taxpayer must file Form 103 with the applicable assessor and declare the exemption on that Form 103.

This exemption does NOT apply to distributable property that is assessed under IC 6-1.1-8 and is owned by a public utility subject to regulation by the Indiana Utility Regulatory Commission. Also, a taxpayer who owns, holds, possesses or controls leased or rented personal/distributable property and who is filing a Form 103 locally may, as deemed necessary by the applicable assessor, need to file Form 103-O or 103-N, as applicable, to verify that he is the appropriate taxpayer to claim this exemption. The Department also reserves the right to request a taxpayer filing a UD-32 to disclose information concerning leased property to ensure the proper taxpayer is claiming the exemption.

### **EXAMPLES OF HOW AN ELIGIBLE PUBLIC UTILITY WOULD PROPERLY FILE:**

If Acme, Inc., has utility property in only Lake County (and in only one taxing district in Lake County) with an acquisition cost of \$15,000, Acme would file a Form 103 with the applicable assessor and declare the exemption.

If Acme owns utility property in only Lake County but in multiple taxing districts in the county, but the total acquisition cost of all the property is still less than \$20,000, Acme would file a UD-32 or UD-45, as applicable, with the Department declaring the exemption. The Department will notify the applicable assessor.

If Acme owns utility property in multiple districts in Lake and Porter Counties and the total acquisition cost of the property in Lake County is \$15,000 but the total acquisition cost of the property in Porter County is \$30,000, then Acme would file a UD-32 or UD-45, as applicable, with the Department, check the box and list "\$15,000 Lake County" on page one, then back out that \$15,000 and report only the \$30,000 as the sum total.

**27. In those jurisdictions where there is an elected township assessor, is the personal property return declaring the exemption filed with the township or county assessor? Who would have jurisdiction for a non-filer of a certification?**

The personal property return declaring the exemption would be filed with whichever assessor the taxpayer would normally file a personal property return. For purposes of the 2016 assessment date only, the notarized certification is filed with the county assessor only.

**28. What, if any, data concerning taxpayers who receive this exemption should we collect and provide to Department? How would we document and submit that data?**

After conversations with property tax management system vendors and county officials, the Department believes it is both possible and important to track as much accurate data as possible on this exemption. This is especially true now that taxpayers are expected to file personal property returns to declare the exemption, and those returns capture certain pieces of information.

The Department recommends recording the following characteristics:

- Personal Property Number (the county should have this information)
- Taxpayer Name
- Taxpayer Company
- Taxpayer Street Address
- Taxpayer City
- Taxpayer Postal Code
- Form Type

The Form Type field may be used to indicate that the taxpayer filed a return declaring an exemption under IC 6-1.1-3-7.2. When Personal Property data is submitted to the Department and Legislative Services Agency, the Form Type field should state “BPPE” for qualified taxpayers.

If the taxpayer provides additional information and the county’s property tax management system can accommodate this additional information, the county assessor is encouraged to record as much detail as possible about the taxpayer and/or exempt personal property.

Exempt taxpayer data should be rolled from the county assessor’s office to the county auditor’s office. When the data is rolled, the assessed value should be listed as \$0 for all qualified taxpayers.

The Department recommends that counties discuss this guidance with their property tax management system vendors to familiarize themselves with the capabilities of their particular software. Further guidance on recording and reporting data for this exemption for assessment dates beginning in 2017 will be released later this year.

**29. How does the exemption work with outdoor advertising signs?**

Outdoor advertising signs are not reported based on acquisition cost. Rather, statute prescribes an assessed value for signs based on their height and illumination. Thus, the exemption may not be applicable to outdoor advertising signs.



**30. If a taxpayer has a gross acquisition cost of \$30,000 but the net acquisition cost is \$19,000 after accounting for obsolescence or other deductions, would the taxpayer be eligible for the exemption based on that net acquisition cost?**

The determination of eligibility would be based on the “total” (or gross) acquisition cost. In the example above, the taxpayer would not be eligible for the exemption.